

N1551aiP plea

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

21 Cr. 343 (SHS)

5 LARRY LAI,

6 Defendant.

7 -----x

8 January 5, 2023

9 11:30 a.m.

10 Before:

11 HON. SIDNEY H. STEIN,

12 U.S. District Judge

13
14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the
17 Southern District of New York

BY: JONATHAN L. BODANSKY

17 Assistant United States Attorney

18 PELUSO & TOUGER

Attorneys for Defendant

19 BY: DAVID TOUGER

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1 (Case called)

2 MR. BODANSKY: Good morning, your Honor. AUSA
3 Jonathan Bodansky for the government.

4 MR. TOUGER: Good morning, your Honor. David Touger,
5 T-O-U-G-E-R, for Mr. Larry Lai, who is standing beside me.

6 THE DEFENDANT: Good morning, Judge.

7 THE COURT: Good morning. And welcome.

8 Do you have an application, Mr. Touger?

9 MR. TOUGER: Yes, your Honor.

10 At this time my client would authorize me to withdraw
11 his entered plea of not guilty and enter a plea of guilty under
12 the plea agreement dated November 22nd, 2022, which I believe
13 the Court has a copy of.

14 THE COURT: Yes, sir.

15 Administer the oath to Mr. Lai, please?

16 THE DEPUTY CLERK: Please stand and raise your right
17 hand.

18 (Defendant sworn)

19 THE DEPUTY CLERK: Please state your full name and
20 spell your name for the record.

21 THE DEFENDANT: My name is Larry Lai. L-A-R-R-Y and
22 L-A-I is the last name.

23 THE DEPUTY CLERK: Thank you. Remain standing.

24 THE COURT: Mr. Lai, do you understand, sir, that you
25 are now under oath, and if you answer any of my questions

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1 falsely, your false or untrue answers may later be used against
2 you in another prosecution for perjury or for making a false
3 statement?

4 THE DEFENDANT: I do.

5 THE COURT: How old are you, sir?

6 THE DEFENDANT: I am going on 71 January 18th.

7 THE COURT: 71, sir?

8 THE DEFENDANT: Yes.

9 THE COURT: How far did you go in school, sir?

10 THE DEFENDANT: I am a college -- second year college.

11 THE COURT: Are you able to read, write, speak, and
12 understand English?

13 THE DEFENDANT: Yes, I do.

14 THE COURT: Are you now or have you recently been
15 under the care of a doctor or a psychiatrist?

16 THE DEFENDANT: No.

17 THE COURT: Have you ever been treated or hospitalized
18 for any mental illness or any type of addiction including drug
19 or alcohol addiction?

20 THE DEFENDANT: No.

21 THE COURT: In the past 24 hours, sir, have you taken
22 any drugs, medicine or pills, or consumed any alcohol?

23 THE DEFENDANT: No.

24 THE COURT: Is your mind clear today, sir?

25 THE DEFENDANT: Yes, Judge.

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1 THE COURT: Are you feeling all right?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you have an attorney here?

4 THE DEFENDANT: Yes, I do.

5 THE COURT: And who is that?

6 THE DEFENDANT: David Touger.

7 THE COURT: Mr. Touger, do you have any doubt as to
8 Mr. Lai's competence to plead at this time?

9 MR. TOUGER: No, your Honor.

10 THE COURT: Mr. Lai, you heard Mr. Touger tell me that
11 you wish to enter a plea of guilty today. Is that true?

12 THE DEFENDANT: Yes, it is true.

13 THE COURT: Have you had a full opportunity to discuss
14 your matter with Mr. Touger and to discuss the consequences of
15 entering a plea of guilty?

16 THE DEFENDANT: Yes.

17 THE COURT: Are you satisfied with Mr. Touger and his
18 representation of you?

19 THE DEFENDANT: Yes.

20 THE COURT: On the basis of Mr. Lai's responses to my
21 questions and my observations of his demeanor as he stands here
22 before me today, I make the finding that he is fully competent
23 to enter an informed plea at this time.

24 Before I accept a plea from you, sir, I am going to be
25 asking you certain questions which are intended to satisfy me

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1 that you wish to plead guilty because you are guilty, and that
2 you fully understand the consequences of entering a plea of
3 guilty. I am going to describe to you certain rights you have
4 under the Constitution and laws of the United States. You are
5 going to be giving up those rights if you enter a plea of
6 guilty. Listen to me carefully and if you do not understand
7 anything I am saying to you or anything I am asking you, I want
8 you to stop me, Mr. Lai, you can ask me whatever you want.

9 Do you understand that?

10 THE DEFENDANT: Yes, I understand.

11 THE COURT: Under the Constitution and laws of the
12 United States, sir, you have a right to a speedy and public
13 trial by a jury on the charges against you which are contained
14 in indictment 21 crim 343.

15 Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: If there were a trial, you would be
18 presumed innocent and the government would be required to prove
19 you guilty by competent evidence and beyond a reasonable doubt.
20 You would not have to prove you were innocent at a trial.

21 Do you understand those rights?

22 THE DEFENDANT: Yes.

23 THE COURT: If there were a trial, a jury composed of
24 12 people selected from this district would have to agree
25 unanimously that you were guilty.

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1 Do you understand those rights?

2 THE DEFENDANT: Yes, I do.

3 THE COURT: You would have a right to be represented
4 by an attorney at trial and at every other stage of the
5 proceeding. If you could not afford an attorney, one would be
6 given at no cost to you.

7 Do you understand those rights?

8 THE DEFENDANT: Yes, I do.

9 THE COURT: If there were a trial, you would have the
10 right to see and hear all of the witnesses against you and your
11 attorney could cross-examine those witnesses. You would have a
12 right to have your attorney object to the government's evidence
13 and offer evidence on your own behalf, if you so desired. And,
14 you would have the right to have subpoenas issued or other
15 compulsory process used to compel witnesses to testify in your
16 defense.

17 Do you understand those rights?

18 THE DEFENDANT: Yes, I do.

19 THE COURT: If there were a trial, you would have the
20 right to testify if you wanted to, but no one could force you
21 to testify if you did not want to testify. In addition, no
22 inference or suggestion of guilt could be drawn if you decided
23 not to testify at your trial.

24 Do you understand that?

25 THE DEFENDANT: Yes, I do.

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1 THE COURT: Do you understand that by entering a plea
2 of guilty today you are giving up each and every one of the
3 rights I have been describing, you are waiving those rights,
4 sir, and that there will be no trial here?

5 THE DEFENDANT: Yes, I do, your Honor.

6 THE COURT: You understand that you have the right to
7 change your mind right now and refuse to enter a plea of
8 guilty. You don't have to enter a plea of guilty if you do not
9 want to for any reason whatsoever.

10 Do you understand that?

11 THE DEFENDANT: Yes. I'm not changing my mind.

12 THE COURT: I'm sorry?

13 THE DEFENDANT: I am not changing my mind today.

14 THE COURT: Well, I just want you to know that you
15 have the right to do so. Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: All right.

18 Have you received a copy of indictment 21 crim 343?

19 THE DEFENDANT: Yes.

20 THE COURT: Did you read it?

21 THE DEFENDANT: Yes, I did.

22 THE COURT: Did you discuss it with Mr. Touger?

23 THE DEFENDANT: Yes, he did.

24 THE COURT: You have the right to have me read that
25 indictment to you in open court, but if you don't want me do

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1 that I won't.

2 What is your pleasure?

3 THE DEFENDANT: You don't have to read it.

4 THE COURT: I accept that as a knowing and voluntary
5 waiver of the right to have the indictment read in open court.

6 Do you understand that charged in Count Two you are
7 charged with conspiring, from November 2019, through at least
8 May 2021, with operating an unlicensed money transmitting
9 business, which business was operated without an appropriate
10 money transmitting license in a state where that operation is
11 punishable as a felony under state law, (B) you failed to
12 comply with the money transmitting business registration
13 requirements of 31 U.S.C. 5330 and the regulations prescribed
14 thereunder, and (C) it involved the transportation and
15 transmission of funds known to you to have been derived from a
16 criminal offense and were intended to be used to promote and
17 support unlawful activity in violation of 18 U.S.C. 371.

18 Do you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: Do you understand that if you do not plead
21 guilty, the government would have to prove every element of
22 Count Two beyond a reasonable doubt at a trial?

23 Do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: Mr. Bodansky, set forth the elements the

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1 government would have to prove beyond a reasonable doubt.

2 MR. BODANSKY: Yes, your Honor.

3 In order to prove the defendant guilty of Count Two,
4 the government would be required to prove, beyond a reasonable
5 doubt, the following elements of 18 U.S.C. 371.

6 First, that two or more persons entered the unlawful
7 agreement charged in the indictment, here to operate an
8 unlicensed money transmitting business; second, the defendant
9 knowingly and willfully became a member of the conspiracy;
10 third, that one of the members of the conspiracy knowingly
11 committed at least one of the overt acts charged in the
12 indictment; and fourth, that the overt act or acts were
13 committed to further some objective of the conspiracy.

14 The underlying offense of operating an unlicensed
15 money transmitting business in violation of 18 U.S.C.
16 Section 1960 has the following elements: First, that the
17 defendant knowingly conducted, controlled, managed, supervised,
18 directed or owned, all or part of a money transmitting
19 business; second, that the money transmitting business affected
20 interstate or foreign commerce in some manner or degree; and
21 third, among other things, that the business involved the
22 transportation or transmission of funds that were known to the
23 defendant to have been derived from a criminal offense or were
24 intended to be used to promote or support unlawful activity.

25 The government would also be required to prove, by a

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1 preponderance of the evidence, that venue is proper here in the
2 Southern District of New York.

3 THE COURT: Mr. Lai, do you understand those are the
4 elements the government has to prove beyond a reasonable doubt,
5 except for the venue requirement, that only has to be proven by
6 a preponderance of the evidence.

7 Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand that the maximum
10 possible penalty of Count Two is five years in prison plus a
11 maximum term of supervised release of three years, plus a
12 maximum fine of the greatest of \$250,000 or twice the gross
13 pecuniary gain derived from the offense or twice the gross
14 pecuniary loss to individuals other than you resulting from the
15 offense, plus a \$100 mandatory special assessment?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you also understand that I can order
18 restitution to anyone injured as a result of your criminal
19 conduct?

20 THE DEFENDANT: Yes.

21 THE COURT: Now, I said part of the maximum sentence
22 was three years of supervised release. Supervised release
23 means you are going to be subject to monitoring upon your
24 release from prison and that monitoring will be under terms and
25 conditions that could lead to your reimprisonment without a

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1 jury trial for all or part of the term of supervised release
2 and without credit for time previously served on post-release
3 supervision if you violate any term or condition of supervised
4 release.

5 Do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you also understand that if I accept
8 your guilty plea and determine that you are guilty, that
9 determination may deprive you of such valuable civil rights as
10 the right to vote, the right to hold public office, the right
11 to serve on a jury, and the right to possess any kind of
12 firearm?

13 THE DEFENDANT: Yes.

14 THE COURT: Mr. Touger, is your client a United States
15 citizen?

16 MR. TOUGER: Yes, your Honor.

17 THE COURT: Mr. Lai, did you discuss with Mr. Touger
18 the fact that there are sentencing guidelines that judges must
19 utilize in applying the factors set forth in 18 U.S.C. 3553(a)
20 to determine what a reasonable and fair and appropriate
21 sentence is in your case?

22 THE DEFENDANT: Yes.

23 THE COURT: Did you discuss the Sentencing Guidelines
24 with him?

25 THE DEFENDANT: Yes, I did.

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1 THE COURT: Do you understand I won't be able to
2 determine what the relevant guideline range is until after I
3 receive a presentence report prepared by the probation
4 department?

5 THE DEFENDANT: Yes.

6 THE COURT: Now, the probation department is going to
7 interview you, sir. Mr. Touger has a right to be there if he
8 and you wish him to be. I want you to give the probation
9 department accurate and complete information because I'm going
10 to use that report in helping determine what your sentence
11 should be.

12 Do you understand that?

13 THE DEFENDANT: Yes, I do.

14 THE COURT: Now, after receiving that report and
15 receiving, by the way, any submissions from your attorney and
16 from the government, and after I adjudicate any objections that
17 either of the parties have here, I then determine what the
18 appropriate guideline range is and after that I then have the
19 ability to impose a sentence based on the departure from the
20 guidelines, in other words, I can sentence you to something
21 that's more time in prison than the guideline range and,
22 similarly, I can sentence to you something that's fewer months
23 in prison than the guideline range provides for.

24 Do you understand that?

25 THE DEFENDANT: Yes, I do.

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1 THE COURT: Even after I do that, sir, I then have to
2 apply all of the factors in Section 3553(a) to determine a
3 fair, reasonable, and appropriate sentence and one that is
4 sufficient but not greater than necessary to meet the ends of
5 the criminal justice system.

6 Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: When you are sentenced to prison, sir, I
9 wish to inform you that you will serve that time in prison, you
10 will not be released any earlier on parole because parole no
11 longer exists in the federal criminal justice system.

12 Do you understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: And do you understand that if Mr. Touger
15 or anybody else has told you what your sentence is going to be,
16 or can be or should be or will be or may be --

17 THE DEFENDANT: Yes.

18 THE COURT: -- and even if you, yourself, believe you
19 know what your sentence is going to be, everybody could be
20 wrong.

21 Do you understand that?

22 THE DEFENDANT: Yes, Judge.

23 THE COURT: And that's because I'm the one who is
24 going to sentence you -- nobody else -- and I don't know what
25 your sentence is going to be because I don't know enough about

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1 you or your crime or your upbringing, education, finances,
2 criminal history, if any. I don't know any of that and I need
3 to know that before I can determine what your sentence is.

4 So, if somebody has told you they know what the
5 sentence is going to be, you can't rely on that, you shouldn't
6 rely on that.

7 Do you understand that?

8 THE DEFENDANT: Yes, I do.

9 THE COURT: And if your sentence is different from
10 what anyone has told you it is going to be, or even if it is
11 different from what you may think it is going to be, you still
12 are going to be bound to your guilty plea today and you won't
13 be able to withdraw your guilty plea.

14 Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: Now, I have an agreement here, Mr. Touger
17 referred to it, he called it the plea agreement, I believe, it
18 is a letter dated November 22nd, to Mr. Touger, it's from
19 Mr. Bodansky, and I'm going to ask my deputy to mark it as
20 Government Exhibit no. 1. I'm going to ask her to show you the
21 last page. Is that your signature on the last page?

22 THE DEFENDANT: Yes.

23 THE COURT: Did you read that agreement before you
24 signed it?

25 THE DEFENDANT: Yes, I did.

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1 THE COURT: Did you discuss it with Mr. Touger before
2 you signed it?

3 THE DEFENDANT: Yes, I did.

4 THE COURT: Did you understand it, sir, at the time
5 you signed it?

6 THE DEFENDANT: Yes, I do.

7 THE COURT: Does that letter agreement, which I will
8 call the plea agreement, constitute your complete and total
9 understanding of the entire agreement between yourself,
10 Mr. Touger, and the government?

11 THE DEFENDANT: Yes.

12 THE COURT: Is everything about your plea and sentence
13 contained in that agreement?

14 THE DEFENDANT: Yes.

15 THE COURT: Are there any side deals I should know
16 about?

17 THE DEFENDANT: No.

18 THE COURT: Has anyone offered you any inducements, or
19 threatened you, or forced you to plead guilty, or to enter into
20 the plea agreement?

21 THE DEFENDANT: No.

22 THE COURT: Do you understand that in this plea
23 agreement, sir, you admitted the forfeiture allegation with
24 respect to Count Two and you have agreed to forfeit \$975,000 in
25 currency to the United States?

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1 THE DEFENDANT: Yes.

2 THE COURT: You also understand that you have
3 stipulated that the appropriate guideline range is 30 to 37
4 months in prison.

5 THE DEFENDANT: Yes.

6 THE COURT: And you have also agreed not to appeal the
7 sentence and not to collaterally attack the sentence if I
8 sentenced you to 37 months or fewer months in prison.

9 THE DEFENDANT: Yes.

10 THE COURT: You also understand that you have waived
11 the right to assert the statute of limitations as a defense to
12 the action against you?

13 THE DEFENDANT: Yes.

14 THE COURT: Mr. Touger, are you aware of any valid
15 defense that would prevail at trial and know of any reason why
16 Mr. Lai should not be permitted to plead guilty this morning?

17 MR. TOUGER: No, your Honor.

18 THE COURT: In your view, sir, is there an adequate
19 factual basis to support your client's plea?

20 MR. TOUGER: Yes, your Honor.

21 THE COURT: In the view of the government, is there an
22 adequate factual basis to support Mr. Lai's plea this morning?

23 MR. BODANSKY: Yes, your Honor.

24 THE COURT: All right, Mr. Lai. Tell me what you did
25 in connection with the charge in Count Two against you for

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1 operating an unlicensed money transmitting business.

2 THE DEFENDANT: I dropped off one person to the bank
3 to make a deposit three times.

4 THE COURT: Say that again, sir? What did you do?

5 THE DEFENDANT: I dropped a person to the bank to make
6 a deposit and that was -- I did it three times.

7 THE COURT: Did you have a money transmitting license
8 in California, sir?

9 THE DEFENDANT: No.

10 THE COURT: Where was the money that you gave this
11 person to deposit derived from? Where did it come from?

12 MR. TOUGER: He did not give the money to the person,
13 the person had the suitcases with him.

14 THE COURT: All right. Where did that money come
15 from? What activity did that money come from?

16 THE DEFENDANT: I have no idea but I know it was
17 illegal.

18 THE COURT: How do you know it was illegal?

19 THE DEFENDANT: Because when they making a deposit, a
20 large sum of money to the bank, anything over \$10,000 they need
21 to have an IRS form, which they don't.

22 THE COURT: They did not in this case?

23 THE DEFENDANT: No.

24 THE COURT: Government, are you seeking more on the
25 allocution?

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1 MR. BODANSKY: I apologize, your Honor. Did the
2 defendant allocute as to whether or not his deliveries crossed
3 state lines? Did he say where they took place?

4 THE COURT: No, he did not.

5 Did you cross state lines when you were bringing this
6 person to make the deposit?

7 MR. TOUGER: The person came from California, he
8 picked them up and brought them to a bank in Queens.

9 THE COURT: In Queens.

10 THE DEFENDANT: Yes; two times.

11 THE COURT: Is that true, sir?

12 THE DEFENDANT: Yes.

13 THE COURT: Did you say two times?

14 MR. TOUGER: Three times, your Honor.

15 THE DEFENDANT: No; two times in Flushing, and one
16 time in Brooklyn.

17 THE COURT: I take it -- I shouldn't take it -- did
18 you have a license to operate a money transmitting business in
19 New York?

20 THE DEFENDANT: No.

21 THE COURT: Anything else, government?

22 THE DEFENDANT: No.

23 MR. BODANSKY: May I confer with defense counsel for a
24 moment?

25 THE COURT: Yes, sure.

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1 (Counsel conferring)

2 MR. TOUGER: Your Honor, one moment?

3 (Defendant and counsel conferring)

4 MR. TOUGER: Your Honor, the defendant is going to
5 make one change to his allocution that it was at least three,
6 it might have been more than three.

7 THE DEFENDANT: Yes, it might have been more than
8 three times.

9 THE COURT: Anything else on the allocution,
10 government?

11 MR. BODANSKY: No, your Honor.

12 THE COURT: Anything else, defense, on the allocution?

13 MR. TOUGER: No, your Honor.

14 THE COURT: When you did these things, sir, did you
15 know that what you were doing was wrong and illegal?

16 THE DEFENDANT: Yes.

17 THE COURT: How do you now plead to the charge in
18 Count Two of indictment 21 crim 343, sir; guilty or not guilty?

19 THE DEFENDANT: Guilty.

20 THE COURT: Are you pleading guilty because you are
21 guilty?

22 THE DEFENDANT: Yes.

23 THE COURT: Are you pleading guilty voluntarily and of
24 your own free will?

25 THE DEFENDANT: Yes.

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1 THE COURT: Because you acknowledge you are guilty as
2 charged, because I find you know your rights and are waiving
3 them knowingly and voluntarily, because I find your plea is
4 entered knowingly and voluntarily and is supported by an
5 independent basis in fact containing each of the essential
6 elements of the offense, I accept your guilty plea, sir, and
7 determine you to be guilty of the offense to which you have
8 just pled. I set the date for sentencing at April 4th at
9 11:00 a.m. in courtroom 23A.

10 Is there any application in regard to bail,
11 government?

12 MR. BODANSKY: No, your Honor.

13 THE COURT: Now, Mr. Lai, you are going to remain at
14 liberty until April 4th, but you are subject to all of the
15 conditions on which you have been released up to now.

16 Do you understand that?

17 THE DEFENDANT: Yes, I do.

18 THE COURT: You have to follow any of those conditions
19 and any violation of those conditions you will be subject to
20 punishment as a result.

21 Do you understand that?

22 THE DEFENDANT: Yes, I do.

23 THE COURT: I will see you on April 4th at 11:00 a.m.
24 in courtroom 23A, or any adjourned date.

25 Mr. Touger?

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1 MR. TOUGER: Just the papers to be marked that I want
2 to be there during presentence interview.

3 THE COURT: Yes, sir.

4 MR. TOUGER: You said 11:00 a.m. for sentence?

5 THE COURT: Thank you.

6 THE DEFENDANT: Thank you, Judge.

7 THE COURT: You are very welcome, sir. And I should
8 say that I have signed a consent preliminary order of
9 forfeiture which bears Mr. Lai's signature and was presented to
10 me. So, I have done that. Thank you.

11 MR. TOUGER: Thank you, your Honor.

12 THE DEFENDANT: Thank you, Judge.

13 THE COURT: You are welcome, sir.

14 THE DEFENDANT: Judge, can I come forward? I want to
15 thank you for giving me the privilege of visiting my
16 granddaughter in Georgia and my niece's wedding in Tennessee
17 and my Lai family reunion in Florida. Thank you very much.

18 THE COURT: You are very welcome, sir. Thank you.

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